IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.393 OF 2007
IN
SPECIAL CIVIL SUIT NO.581 OF 2006

M/s. Sahaj Developers .. Appellants
(Orig. Plaintiff)

Versus

1) Maharashtra Industrial Development Corporation ..Respondent No.1/ Org. Defendant No.1

2) M/s.Vipul Chemicals (I) Pvt. Ltd. ..Respondent No.2/ Org. Defendant No.2

Mr.A.K.Abhyankar,ld. Adv. for the Appellants
Mr.C.J.Sawant,ld. Adv. for the Respondent No.1
Mr.V.A.Thorat,ld. Adv. for the Respondent No.2

CORAM : S.R.SATHE,J.
DATED : 13/09/2007

ORAL ORDER :-

1. The Appellants-original Plaintiffs in Special Civil Suit No.581 of 2006 have preferred this appeal against the order passed by the Court of CJSD, Thane below Exh-5 whereby Plaintiff's application for temporary injunction restraining the defendants from inviting tender in respect of the suit plot and/or accepting any other offer for the suit plot and/or allotting it to any other person till the disposal of

the suit was dismissed. For the sake of convenience hereafter the parties shall be referred to as 'Plaintiffs' and 'defendants'.

2. The brief facts giving rise to this appeal are as under :-

Plaintiff is a registered partnership firm. The defendant No.1 is the Maharashtra Industrial Development Corporation (hereafter referred to as MIDC) constituted under the Maharashtra Industrial Development Act, 1961. The defendant No.2 is private limited company who is claiming allotment of the suit plot. The defendant No.1 MIDC invited sealed tenders for allotting suit plot No.C-53 at TTC industrial area, Navi Mumbai on certain terms and conditions. As per the said terms tenderer was to submit two sealed envelops. In the first envelop it was necessary to provide cheque of earnest amount alongwith previous 3 years tax returns, SSI registration and if the tenderer is already in possession of any plot out of the industrial estate details about the same. In the second envelop, tenderer was to submit the prescribed form duly filled in alongwith project report, block plan of the proposed construction, constitution and cheque/draft for the process charges. It was made clear that first, envelop

No.1 or A envelop will be opened and if it is found that all the requirements contemplated in the said envelop-A are fulfilled then only envelop-B will be opened. If there are short comings in the A-envelop tender will be rejected even without opening envelop-B. Besides, it was also made clear that tender will be granted in favour of the person who would give the highest bid. However, while doing so, preference will be given to the tenderer who is having adjoining plot in the said industrial estate. It was also the condition that the tenderer must ask for the allotment of the plot for the purpose which is permitted in the said zone. It was further made clear that if the tender is accepted then accordingly, allotment will be issued and the MIDC will be having a right to reject any tender without giving any reason and the decision of the land allotment committee in this behalf would be final.

3. In view of the invitation of such tender Plaintiff submitted the tender in two envelops. The first envelop submitted by the Plaintiff was opened on 26/04/2006. The second envelop i.e.B-envelop was opened on 28/04/2006. On 23/06/2006, the defendant No.1 MIDC wrote one letter to the Plaintiff and informed them

that they have not furnished the details as called for in the application form and as per the terms and conditions annexed thereto and their application is liable to be rejected. They were therefore called upon to tender their explanation within 7 days from the receipt of the letter as to why their application (quotation should not be rejected).

4. In pursuance of the said letter, Plaintiffs informed defendant No.1 on 29/06/2006 that in the second page of their project report, they wrongly mentioned that they have decided to manufacture “electronic item” for which land in Ravale was required. According to them, through oversight and inadvertence such mistake occurred but they in fact, submitted the report for allotment of land for industrial dies and colour, distemper and cement paint. They submitted that the suit plot will be used for chemical processing and asked the defendant to issue the allotment letter. On 20/09/2006, the Plaintiffs issued a letter through advocate and called upon the defendant No.1 to issue the allotment letter as they had given the highest bid. Therefore, on 25/09/2006, the defendant No.1 MIDC informed the Plaintiff that their explanation in the letter dated 29/06/2006 is not

acceptable and they have therefore, rejected the tender or quotation of the Plaintiffs.

5. The Plaintiffs, therefore, filed the above mentioned suit on 13/10/2006 and prayed for a declaration that they are eligible for the allotment of the suit plot in as much as on opening of the envelop-A. Plaintiffs were found to be eligible and that the defendant No.1 is liable to allot the suit plot to Plaintiff, they being the highest bidder. They also prayed that defendant No.1 MIDC be directed to allot suit plot to Plaintiffs. On the date of filing of the suit, Plaintiffs also submitted an application Exh-5 seeking temporary injunction restraining defendant No.1 MIDC from allotting the suit plot to any other person than Plaintiffs.

6. The defendant No.1 filed its Written Statement and admitted that in pursuance of the invitation of the tender, Plaintiffs had submitted their tender in two envelops. They also admitted that the Plaintiffs had given the highest offer. However, according to them, when Plaintiff's application and other material was placed before the committee, it was noticed that the Plaintiffs had not given all the details as required

and in his project report it was mentioned that Plaintiffs have decided to manufacture electronic item and for that the suit plot is required. The defendant No.1, therefore, called upon the Plaintiffs to show cause as to why their tender should not be rejected for want of the details and proper compliance of the terms and conditions. The letter received from Plaintiff was considered by the committee and it was found that explanation was not acceptable and hence, the tender of Plaintiffs was rejected. The defendant No.1 also contended that it was within their powers to reject the Plaintiff's tender. No vested right was created in favour of Plaintiffs. Even after the rejection of the Plaintiff's tender, defendant No.1 followed proper procedure. Defendant No.1 contended that Plaintiffs have not made out any prima facie case. If temporary injunction is granted the defendant No.1 would in fact suffer irreparable loss because they would not get the entire price of the said plot which is of the tune of Rs.2 Crores or so and as such, they are deprived of the said amount and interest thereon. The defendant No.1, therefore prayed for the dismissal of the Plaintiff's application for temporary injunction.

7. The defendant No.2 also filed their written say

and opposed the application. They contended that Plaintiff's tender was rightly rejected by the defendant No.1 and defendant No.2 has given the offer and shown willingness to pay the price which was quoted by the Plaintiffs. Besides this, the defendant No.2 is having plot No.C-62 and C-101 in the said industrial estate and as such, they were entitled to have preference in securing the plot as per the terms and conditions of the MIDC. The defendant No.2 also contended that Plaintiffs have not made any prima facie case and balance of convenience is not in Plaintiffs favour. The defendant No.2, therefore, prayed for the dismissal of the application.

8. After hearing the arguments advanced by the learned advocates of both the sides, learned Trial Judge came to the conclusion that the project report submitted by the Plaintiffs alongwith tender application was not proper. It was cryptic and the defendant No.1 was fully justified in rejecting the said tender. He, therefore, held that Plaintiffs have failed to make out any prima facie case and the balance of convenience is also not in favour of the Plaintiffs. Naturally, he rejected the Plaintiff's application.

9. The above mentioned order is challenged in this appeal. Shri A.K. Abhyankar, learned Senior Advocate for the Plaintiffs has urged two points. Firstly, he submitted that in the project report it was clearly mentioned that the plot is required for manufacturing industrial dies, colour, oil distemper and cement paints, however, through mistake and inadvertence it was mentioned in the first paragraph of their project report that Plaintiffs have decided to manufacture electronic items and for that, plot is required. According to him, the said discrepancy in the report was properly explained by the Plaintiffs by their letter dated 29/06/2006. So, according to him, the defendant No.1 wrongfully rejected the Plaintiff's tender though it was highest and also did not give reasons for the rejection. He, therefore, submitted that such action of the defendant No.1 is illegal. Secondly, he canvassed before me that the defendant No.1 has practically accepted the tender of defendant No.2 on the ground that the defendant No.2 is having other industrial units in the same MIDC locality. According to learned Advocate the stipulation in the tender was only to give preference to adjoining plot holder and not to any one else. So, criteria applied by the defendant No.1 while considering the case of the

defendant No.2 was also not legal. He, therefore, submitted that Plaintiffs have made out a prima facie case to show that their tender has been wrongly rejected and as such temporary injunction as prayed be granted and Plaintiffs can even be put to terms like depositing the entire purchase price in the Court within stipulated time. He also submitted that if temporary injunction is not granted Plaintiffs would suffer irreparable loss. He, therefore, submitted that the appeal be allowed and temporary injunction as prayed by the Plaintiffs be granted. As against this, Mr.C.J. Sawant, learned Sernior Advocate for the defendant No.1 MIDC submitted that Plaintiff's tender application was in fact not properly filled. Necessary details were not provided. Besides this, admittedly, there was mistake in the Plaintiff's project report. The suit plot was to be allotted only for chemical units and as Plaintiff's project report showed that it was required for electronic unit, the defendant No.1 rightly rejected the explanation given by the Plaintiff. He also submitted that Plaintiffs have failed to comply the terms and conditions of the tender notice and the action taken by the defendant No.1 namely rejecting the Plaintiff's tender is legal and valid. He also submitted that that the defendant No.1

is in fact taken proper care to see that no loss is caused to defendant No.1. It is only when they found that second bidder was also not eligible to get suit plot, they considered the case of defendant No.2 he being last bidder who ultimately agreed to give purchase price that was quoted by the Plaintiff. Thus, according to him, action taken by the defendant-MIDC was legal and proper. It is also submitted that no vested right was created in favour of Plaintiff. So, there was no question of defendant committing any breach of the said right. Thus, according to him, the learned Trial Judge rightly rejected Plaintiff's application.

10. Shri V.A. Thorat, learned Senior Advocate for the defendant No.2 also supported the order passed by the learned Trail Judge. He also submitted that Plaintiff is in fact not having any legal right in claiming the allotment of the suit plot and as such the appeal be dismissed.

11. It is not in dispute that the suit plot is situated in chemical zone and as such it was to be allotted only for the purpose of carrying out activity regarding chemicals. It is an admitted fact that the

project report submitted by the Plaintiffs was hardly of half a page. The said report is as follows :-

" Introduction :

We are partnership company by the name of SAHAJ DEVELOPERS, having the office at Shop No.4, Mahavir Kutir, Plot No.19, Sec. No.42, Nerul, Navi Mumbai company have decided to manufacture electronic item for which we require a land in Rabale of TTC MIDC area.

"Production Manufacturing :-

Industrial dyes and colour, oil, distemper and cement paints.

Capital requirement :-

Land : Rs.2,06,04,000.00

Building : Rs. 90,00,000.00

Machinery : Rs.1,30,00,000.00"

12. It must be noted that on receipt of such report and form the defendant No.1 wrote a letter dated 23/06/2006 wherein they have mentioned :-

" This is to bring to your notice:-

(a) In your application form No.292, you have mentioned that the manufacturing activities are Industrial Dyes and Colour oil, Cement paint.

(b) You have produced project report of Shri Rajesh Patel, Promoter for manufacturing of Electronic items for which land is required in Rabale or TTC MIDC Area.

It seems from the above, that you have not furnished the details as called for in the Application Form and as per terms and conditions annexed thereto and thereby your application (quotation) is liable for rejection. You are, therefore, called upon to tender your explanation within 7(seven) days from the date of receipt of this letter as to why your Application (quotation) should not be rejected. In case, your explanation is not received within the stipulated time as above, it will be presumed that you have nothing to say in the matter further and

action deem for will be taken including rejection of your quotation."

13. It is also admitted that on 25/09/2006, the defendant No.1 signed the letter to Plaintiff and mentioned therein :-

" This is to inform you that your explanation tendered by you vide your letter dated 29/06/2006 is not acceptable. Your application (quotation) for allotment for Plot No.C-53 is, therefore, rejected by the Land Allotment Committee. Your Banker's cheque No.260013 dated 25/04/2006 drawn on Corporation Bank for Rs.6,37,500/- is returned herewith."

14. The fate of this appeal depends on the question as to whether the defendant No.1 MIDC was justified in rejecting the Plaintiff's tender. Shri Abhyankar, learned senior advocate for the Plaintiff strenuously argued before that in the instant case, when the Plaintiffs had made it clear by their reply that due to inadvertence mistake occurred when they mentioned in the report that the plot is required for electronic items and in fact in that very report, they had also

mentioned that the plot is required for manufacturing industrial dies, colour and oil etc. the defendant No.1 ought to have accepted the explanation and granted tender in favour of Plaintiffs. When this argument is advanced it presupposes that the Plaintiff's tender is rejected only on the ground of above mentioned discrepancy or because of the words “electronic item” mentioned in the Plaintiff's alleged project report. But it is not so. Merely because in their letter defendant No.1 had quoted two paragraphs mentioned in the Plaintiff's project report itself, we can not jump to the conclusion that they were having doubt only in respect of the said discrepancy. There is nothing in the letter dated 23/06/2006 written to Plaintiffs to show that there was no other lacuna or short coming in the tender submitted by the Plaintiffs. It must be noted that defendant No.1 has mentioned in their letter:-

> ***“It seems from the above, that you have not furnished the details as called for in the form and as per terms and conditions annexed thereto. (emphasis is mine)”***

15. From the above averments it is very clear that

the defendant No.1 had not only stated that the details in application are not furnished but it was also made clear that the details as required as per the terms and conditions annexed to the tender form or to the tender were also not furnished. Naturally, it becomes necessary to see what envelop-B was supposed to contain. If we see the terms and conditions of the said tender and in particular clause-3(b) it is clearly mentioned therein.

> **"**दुस-या सिलबंद लखोटयामध्ये संपूर्णपणे भरलेला विहित नमुन्यातील अर्ज, प्रकल्प अहवाल, नियोजित बांधकामाचा आराखडा **(**ब्लॉक प्लॅन**)**, घटना व रु**. 1000/-**प्रक्रिया शुल्क म्हणून मुख्य कार्यकारी अधिकारी, मऔविम, **(C.E.O.MIDC)**यांचे नाव असलेला धनाकर्प **(**बॅंक ड्राप्ट**)**असेल**"**
>
> (The second sealed envelop should contain prescribed form duly filled in, project report, block plan of the proposed construction, constitution and cheque for process fee)

16. When the defendant had specifically informed that the Plaintiff has not given details as per the terms and conditions it was in fact obligatory on the part of the Plaintiff to show that all those terms and

conditions have been fulfilled. The Plaintiffs were not only supposed to file application and project report they were also expected to submit the block plan of the proposed construction and the constitution. There is nothing on record to show that Plaintiffs had accordingly submitted the block plan of the proposed construction and the constitution. So, Plaintiffs had certainly not complied the terms and conditions mentioned in clause-3(B) of the tender.

17. It is true that Plaintiff had submitted one paper shown as project report. Bare reading of that paper would show that the said paper can not be called a 'project report'. Learned Trial Judge has observed that the alleged project report is very cryptic. I would go a step further and say that whatever document is produced by the Plaintiff as “Project Report” by no stretch of imagination can be called as 'Project Report'. Normally, a project report should contain information about the action or steps to be taken or required to be taken to achieve the ultimate object of the scheme to be implemented. It should indicate that the careful planning has been done in respect of each and every aspect touching to the implementation of the scheme. If we see the alleged project report submitted

by the Plaintiffs, it only shows that plot is required for electronic item and then it is mentioned that it is required for manufacturing industrial dies, colour and oil etc. No details about the plant and machinery required for such units, raw material required for such unit, the process of preparing finished products, the layout of the units were given in the said document. So the alleged project report can not be said to be a 'project report' in real sense. It is a document where Plaintiffs have only mentioned at one stage that the plot will be used for the purpose of manufacturing industrial dies, colour, oil etc. We can not ignore the fact that defendant No.1 had not asked the tenderer to mention a purpose for which the plot is required but they had specifically asked for 'प्रकल्प अहवाल' i.e. project report. So, I have no hesitation to hold that whatever report that was submitted by the Plaintiffs can not in fact be regarded as 'project report'. From the very fact that the defendant MIDC had asked for project report it goes to show that the defendant No.1 was to consider each and every angle of the proposed unit and then decide whether a plot out of industrial estate can be allotted for such unit. So, when plaintiffs did not furnish necessary project report, the very object of calling project report was defeated.

As mentioned above Plaintiffs have also not given the other details regarding block plan, constitution etc. So, under the circumstances defendant MIDC was fully justified in rejecting the explanation given by the Plaintiff and consequently their tender. In fact, the defendant No.1 could have rejected the tender out right for want of necessary details and particulars as required by terms and conditions but it seems that only with a view to give one opportunity to the Plaintiffs, they issued the letter dated 23/06/2006. Even after the receipt of the said letter, Plaintiffs did not furnish necessary details and comply all the terms and conditions. Hence, the defendant No.1 rightly rejected the tender.

18. Once it is said that the defendant No.1 has rightly rejected the tender the question as to whether the action of defendant No.1 in considering the tender of defendant No.2 was legal or not does not arise. This in fact is not the subject matter of the present suit. In order to succeed in the suit, Plaintiffs have to show that they had acquired any valuable legal right and the said legal right was or is being infringed by the defendant No.1. It is needles to say that Plaintiffs have failed to show prima facie that they

have acquired any legal right of securing allotment of the suit plot. Merely because they had given highest offer was not sufficient for granting allotment. So, I have no hesitation to hold that the learned Trial Judge has rightly rejected the Plaintiff's application.

19. Once it is said that the Plaintiff has failed to make out any prima facie case, question of balance of convenience or hardship or loss does not arise. On the contrary, as a result of the Plaintiff's suit the process of allotment has been delayed and inconvenience and loss is in fact caused to the defendant and consequently to the public at large. So, looking to the case from any angle, it can not be said that the discretion used by the learned trial Judge in rejecting the application was improper or illegal.

In this view of the matter, there is no substance in the present appeal. Hence I pass the following Order :-

The appeal is dismissed.

(S.R. SATHE,J.)

At this stage, learned Advocate for the

Appellant submits that status-quo was in operation in this matter since 6/10/2006 and hence the said status-quo be continued for further period of 4 weeks. Having regard to the facts and circumstances of the case and having observed that defendants in fact could not receive the amount of Rs.2 crores and odd, it is in fact not necessary to continue status-quo any further. However, with a view to give an opportunity to the Appellant to approach the superior court, status-quo granted earlier is to continue for further period of two weeks.

(S.R. SATHE,J.)